

EXECUTIVE SUMMARY

WISCONSIN CONFIDENTIALITY PROJECT

Joint Project of the Children's Court Improvement Program
and Children's Justice Act Program

The State of Wisconsin has a long history of making great efforts to protect children from abuse and neglect. The Children's Code of the Wisconsin Statutes (Chapter 48) provides the legal foundation for protecting children. Implementation of the statutory provisions relating to Children in Need of Protection and Services (CHIPS) proceedings requires collaboration among professionals representing the judicial, legal and the human/social services systems.

The Director of State Courts Office (Children's Court Improvement Program) and the Wisconsin Department of Justice (Children's Justice Act Program) partnered in 1999 to initiate the Confidentiality Project (hereinafter referred to as Project) as a response to issues raised at a 1997 conference convened by the Wisconsin Supreme Court. At that conference, participants began to explore how the judicial, legal and human/social services systems could partner to improve services for individuals involved in CHIPS proceedings. They recognized that both the confidentiality-of-records laws and systems practices play significant roles in shaping the nature of the interactions between these systems.

The partnering agencies appointed a Confidentiality Advisory Board (CAB) to develop specific Project goals and oversee their implementation. CAB membership included judges, public and private family service providers, law enforcement, physicians, prosecutors, guardians ad litem, court practitioners, tribal attorneys, educators, legislators and juvenile justice professionals. CAB members established the following goals:

- Compile a description of federal and state laws applicable to CHIPS cases that govern the sharing of confidential information by the judicial, legal and human/social services systems.
- Describe judicial, legal and human/social services systems practices regarding requesting, using and disclosing confidential information about children and their families involved in CHIPS proceedings.

The CAB members decided to use the information obtained from meeting the aforementioned goals to fulfill the following objectives:

- Identify revisions, if any, of existing state laws that could be made to facilitate the cross systems sharing of confidential information while continuing to protect privacy rights.
- Develop or recommend the development of policies and procedures to improve cross systems cooperation in sharing confidential information.
- Design ways in which to disseminate legal and best practice information throughout the judicial, legal and human/social services systems.

The CAB formed two work groups and assigned specific tasks to each group. Both the Statutory Analysis Work Group and Current Practice Issues Work Group produced a written report summarizing the results of their efforts.

The 67 page Statutory Analysis Work Group Report provides succinct summaries of 37 state and federal laws relating to confidentiality of records. It provides the reader with a basic knowledge of the following:

- Types of records that contain confidential information.
- Applicability of each law to certain types of records.
- An outline of procedures governing the sharing of information among entities involved in CHIPS cases.

The Current Practices Work Group based its report on information gathered through face to face interviews with professionals and results of a written survey sent to over 2,700 professionals with experience in CHIPS proceedings. Survey recipients included among others: child welfare agencies, public defenders, district attorneys, guardians ad litem, judges, law enforcement, mental health and other medical professionals, and school administrators. The report reveals that the degree of trust between an information-seeker and a potential information-provider plays an important role with respect to the difficulty the seeker experiences obtaining confidential information. Additionally, the report indicates that professionals struggle with inconsistencies among state and federal laws, agency policies and professional standards/ethics.

In August of 2002, the CAB made the following recommendations based upon the work group reports:

- Produce two written resources to improve professional and consumer understanding of confidentiality laws as they relate to CHIPS cases.
 - ✓ Reference handbook for judicial, legal and human/social services systems professionals that explains the content of federal and state confidentiality laws and provides guidance in implementing the procedural requirements of the laws.
 - ✓ Pamphlet that informs parents/guardians about their legal rights with respect to the sharing of confidential information regarding themselves and their children.
- Explore the possibility of working with the State Bar to develop a reference tool that includes a compilation of federal and state confidentiality laws.
- Provide easy access by professionals throughout Wisconsin to the Confidentiality Project Executive Summary and work group reports.
- Support the development of a model policy by domestic violence advocates for reporting child abuse and neglect in domestic violence situations.
- Support the efforts of counties to implement multidisciplinary teaming to address specific cases and systems issues.

- Encourage memoranda of understanding among agencies involved in CHIPS cases regarding their procedures for exchanging information.
- Encourage the Department of Public Instruction and Department of Health and Family Services (DHFS) to schedule a summit to explore the improvement of information sharing practices.
- Assess the feasibility of establishing a central office to support best practices by guardians ad litem.
- Suggest that DHFS pursue legislative action to combine into one subsection of the Children's Code, ch. 48, Wisconsin Statutes, all existing provisions dealing with confidentiality.
- Recommend that DHFS pursue legislative action to develop a uniform statutory definition of "record" (written, electronic and verbal communication) to be used throughout Wisconsin Statutes.

The Director of State Courts Office and the Department of Justice are committed to implementing the two key CAB recommendations relating to the production of written materials before the end of 2004.

This Executive Summary and reports of the work groups are available at the Director of State Courts Office and the Department of Justice websites.